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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

SINGLE MEMBER APPEAL BRANCH

Appeal No. ST/820 /2011 – SM[BR] ST /STAY/ 1706/2011-SM[BR] **Date 20/10/2011**

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S K.M. SUGAR MILLS LTD.,
MOTINAGAR, FAIZABAD (U.P.)

M/S K.M. SUGAR MILLS LTD., Appellant
Vs
C.C.E ALLAHABAD Respondent

I am directed to transmit herewith a certified copy of **Final order No. 725/2011-SM[BR]&S/650/2011** dated 30.9.2011 passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
C.C.E ALLAHABAD
38,M.G.MARG, CIVIL LINES,
ALLAHABAD

2. Adv. / Consult
MR.BIPIN GARG
B-1/1289,A-VASANT KUNJ, NEW DELHI

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi -
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing : 30.9.2011

Service Tax Stay No. 1706 of 2011-SM & Service Tax Appeal No. 820 of 2011-SM

[Arising out of the Order-in-Appeal No. 21/ST/Appl/2011 dated 23.2.2011 passed by the Commissioner (Appeals), Central Excise, Allahabad]

Coram:

Hon'ble Mr. Mathew John, Member (Technical)

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	Yes
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3.	Whether their Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	Yes

M/s K.M. Sugar Mills Ltd. — Appellant

Vs.

CCE, Allahabad — Respondent

Appearance:

Appeared for Appellant : Ms. Sukriti Das, Advocate
Appeared for Respondent : Shri B.L. Soni, DR

CORAM: Hon'ble Mr. Mathew John, Member (Technical)

Final Order No. 725/2011 SM(BR) & S-650/2011 SM (BR) dated............

Per Mathew John:

The Appellants are manufactures of sugar and molasses. They received the service of Goods Transport Agency for transportation of their raw materials into their factory. They claimed that they paid Service Tax on such services as a receiver of services and they took credit on such tax. A Show Cause notice was issued to the appellant alleging that such credit of tax paid on such services of Goods Transport Agency was taken on documents that are not specified under Rule 9 of Cenvat Credit Rules 2002.

2. A Show Cause Notice proposing to deny Cenvat credit to the extent of Rs.3,15,505/- has been adjudicated by the Assistant Commissioner denying such credit and demanding amount along with appropriate interest. Further, penalty of Rs. 3,15,505/- is also imposed under Section 78 of the Finance Act, 1994. Aggrieved by the order, the Appellants filed appeal before the Commissioner (Appeals) who did not give any relief to the appellants

3. Ld. DR submits that the appellants have taken credit on the strength of bills issued by the provider of GTA service. There is no proof that the amounts for which credit has been taken have been deposited in Government's account. Since documents on which credits were taken are not documents specified in Rule 9 of the Cenvat Credit Rules and since there is no proof of deposit of the said amount, credit cannot be allowed.

4. Considered arguments on both sides. The matter before the Tribunal involves two issues namely :

(1) What are the documents on which Cenvat credit can be taken when a person receiving service pays service tax in respect of services like GTA services under Rule 2(1)(v) of the Cenvat Credit Rules, 1944?

(2) During the relevant period what is the permitted mode of payment for service tax when service tax is paid by the receiver of service? Whether it is mandatory to pay service tax through challans, in such cases?

5. The second issue has not been considered or argued at any stage of this case. It is stated only for the reason that there are so many cases where this issue is being disputed and decided and there is likelihood that payment through Cenvat account is the real issue leading to the dispute at hand.

6. I propose to consider this appeal only in respect of issue which has been under dispute as seen from Show Cause Notice onwards. The fact remains that Rule 9 of the Cenvat Credit Rules does not specify any document based on which the person who is paying Service Tax from PLA account or Cenvat Credit Account as a receiver of service can take credit. If such payment is paid under a challan obviously it can be taken but if it is paid through PLA by a debit entry, it is also a valid method of payment for such tax. The person paying tax through challan in ~~GAR-9~~ GAR-9 form also would face difficulty in taking credit if Rule 9 of Cenvat Credit

Rules is to be implemented word by word. Even when GAR-9 ~~GFR-9~~ challan is used that challan does not show details like name of the service provider, his registration number, value of the service etc. Therefore the bill given by the transporter coupled with the GAR-9 ~~GFR-9~~ challan will be necessary for taking the credit. The same can be achieved even in a situation where payment is made by a debit entry in Cenvat credit account as supported by bills raised by the service provider. At this stage a dispute can arise whether in such cases, during the relevant period, payment can be made through Cenvat credit at all. This matter is decided in the affirmative by Punjab & Haryana High Court in the case of **Nahar Spinning Mills Vs. CCE** – 2010-TIOL-868-HC-P&H-ST. The next question that arises is whether the payment made through Cenvat credit account is on a different footing as compared to a debit in a PLA register. There is no reason to make such distinction because payment through PLA and Cenvat credit account are on identical footing for discharge of duty liability. It is seen that this issue is already decided by the Tribunal in the case of **CCE Vs. Vinayak Textile Mills** – 2010 (261) ELT 628.

7. In this particular case, the issue whether the tax due was actually paid, whether through PLA or RG-23 is not examined at any stage. The counsel for the Appellants submit that service tax was actually paid by debit in Cenvat credit account and she is willing to produce necessary documents. The Tribunal cannot look at these evidences in appeal proceeding.

8. Considering that the critical issues involved in this dispute is not scrutinised and findings thereon given clearly recognising the incompleteness of Rule 9 to deal with the situation, and the decision of the Tribunal in the case of **Vinayak Textile Mills** (supra), I consider it proper to waive the pre-deposit of the impugned amount for admission of the appeal. Further, the appeal itself cannot be decided unless there is a clear finding of facts on issues as raised above. Therefore, I set aside the impugned order and remand the matter to the adjudicating authority for de novo consideration of all the facts and legal issues involved that may be raised by the appellant before adjudicating authority. Accordingly stay petition and appeal are disposed of.

(Dictated & pronounced in open Court)

(Mathew John)
Member (Technical)

RM